Digitized by the Internet Archive
in 2014

https://archive.org/details/municipalboard1970onta

Governmental
Publications

ONTARIO

THE ONTARIO MUNICIPAL BOARD

123 Edward Street
Toronto 1

65TH ANNUAL REPORT

of

THE ONTARIO MUNICIPAL BOARD

Upon the Affairs of the Board

During the Year Ended

December 31, 1970

TO: THE HONOURABLE THE MINISTER OF MUNICIPAL AFFAIRS

Pursuant to Section 100 of
The Ontario Municipal Board Act
R.S.O. 1960, Chapter 274

I N D E X

	Page
PART I	
Nature and Scope of this Report	1
PART II	
Establishment and Operation	2-3
PART III	
Membership and Organization	4-5
PART IV	
Jurisdiction and Functions	6-7
PART V	
Growth and Economic Stability of Municipalities	
Section 1 Constitution, Boundary Revision and Dissolution of Municipalities	8
Section 2 Approval of Capital Undertakings and of the Imposition of Rates and Levies to Recover the Cost thereof	9-10
Section 3 Approval of Restricted Area By-laws, Official Plans and Plans of Subdivision	11-12
Section 4 Assessment Appeals	13-14
PART VI	
Arbitrations in Respect of Compensation for Lands Taken or Injuriously Affected	15
PART VII	
Revenue	16
Schedule "A"	
Schedule "B"	

ONTARIO

THE ONTARIO MUNICIPAL BOARD

PART I

NATURE AND SCOPE OF THIS REPORT

Section 100 of The Ontario Municipal Board Act, R.S.O. 1960, Chapter 274, provides as follows:

> "100.-(1) The Board shall, after the close "of each calendar year, make an annual re- "port upon the affairs of the Board to the "Minister of Municipal Affairs who shall "file it with the Provincial Secretary.
> "
> " (2) The Provincial Secretary shall "submit the report to the Lieutenant Governor "in Council and shall then lay the report "before the Assembly if it is in session or "if not, at the next ensuing session".

Experience indicates that the real nature and purpose of this section is not generally understood. In some instances criticism has been voiced that a certain annual report was merely a "carbon copy" of the reports of previous years.

A careful, objective analysis of the powers and function of the Board establish clearly that the Board is not a department or agency of government entrusted with the custody of some phase of provincial or municipal jurisdiction.

Certainly in recent years this Board has fostered and furthered the concept that it acts as a tribunal rather than as an agency or commission. A proper report, therefore, in keeping with the provisions of the section and the function of the Board will resemble of necessity in format reports of previous years. This report discusses volume of work, quantitative comparisons of capital expenditures, practices and procedures introduced, followed and developed and conclusions deemed valid and timely from the foregoing.

The report of this Board should not presume to embark on a general commentary about laws and policies of the Province even as these concern municipalities.

.....

PART II

ESTABLISHMENT AND OPERATION

As noted in Part I the Board acts mainly as a tribunal rather than as an agency or commission.

The Board is established and exists under authority of The Ontario Municipal Board Act, R.S.O. 1960, Chapter 274, as amended. Much of the jurisdiction is created or vested by that statute itself, but many other duties are reposed in the Board by other statutes, notably The Municipal Act, The Planning Act, the School Acts, The Highway Improvement Act and The Assessment Act.

Of course, the rules of natural justice apply to all applications made to the Board. In the case of capital expenditure applications, unless the whole cost is to be paid out of the general rate, notice is required to those sought to be charged with a special rate. In some other cases, such as applications to dispense with a vote of the electors, notice is required by statute. When objections are made a hearing is always held.

The Board requires notice of applications for approval of land use control by-laws passed under authority of The Planning Act to be given to owners especially affected and if the number is too great for individual notice, by publication. If objection is made a hearing is held.

The Board is given jurisdiction under a large number of statutes but its procedure and general powers are governed by The Ontario Municipal Board Act. The Board carries out and performs statutory duties and functions only, and while it is a corporate body the practice is strictly followed of assigning members to specific applications which require a hearing and after the hearing has commenced they are considered seized of such application. If a change must be made for an unavoidable

reason the hearing is commenced de novo. Two members are a quorum to hear and dispose of any application and the Chairman may appoint one member to hear any application and report to the Board. In such cases the decision or order is made by the Chairman or by two other members, one of whom must be a vice-chairman.

One function of the Board, namely the hearing of assessment appeals from County and District judges, can be said to be strictly judicial, while most, if not all, of the Board's other jurisdiction, whether by way of appeal or as a tribunal of first instance, is administrative.

In this connection reference is made to a judgment of the Ontario Court of Appeal in Re Ashby, 1934 O.R. at page 421. There the Court adopted with approval an article setting forth the difference between a judicial and an administrative tribunal. A judicial tribunal hears evidence, makes findings and applies the law; an administrative tribunal hears evidence, makes findings and applies policy. The Board endeavours to avoid use of the expression "quasi-judicial" since this tends to blur some of the basic principles.

Prior to 1969 the Board had jurisdiction to award compensation in expropriation cases but this duty has now been transferred to the Land Compensation Board.

.....

PART III

MEMBERSHIP AND ORGANIZATION

The membership and organization of the Board during the period covered by this report was as follows:

J. A. KENNEDY, Q.C. (Appointed October 1st, 1956)	Chairman
A. H. ARRELL, Q.C. (Appointed June 30th, 1961)	Vice-Chairman
H. E. ROBERTS (Appointed June 30th, 1961)	Vice-Chairman
D. JAMIESON (Appointed December 1st, 1955)	Vice-Chairman
W. SHUB, Q.C. (Appointed June 1st, 1963)	Vice-Chairman
R. M. McGUIRE (Appointed November 1st, 1963)	Vice-Chairman
A. L. McCRAE (Appointed December 1st, 1958)	Member
J. V. LUDGATE (Appointed April 1st, 1962)	Member
F. G. BLAKE (Appointed November 15th, 1962)	Member
W. T. SHRIVES (Appointed October 18th, 1965)	Member
W. H. J. THOMPSON, Q.C. (Appointed July 1st, 1966)	Member
B. E. SMITH (Appointed August 1st, 1968)	Member
ALAN VAN EVERY, Q.C. (Appointed September 3rd, 1968)	Member
D. S. COLBOURNE (Appointed September 3rd, 1968)	Member
S. S. SPEIGEL (Appointed May 4th, 1970)	Member
H. H. LANCASTER (Appointed September 7th, 1970)	Member
.....	
R. SCOTT (Appointed June 1st, 1967)	Secretary
D. H. SUTHERLAND (Appointed January 1st, 1963)	Registrar

All Board Members and staff are engaged full-time. The Board's Chambers are located at 123 Edward Street, Toronto 101. Enquiry - Sixth Floor.

.....

PART IV

JURISDICTION AND FUNCTIONS

The jurisdiction and function of this Board are a part of what is known as the administrative process. As noted earlier, the Board is not a department of government but a tribunal exercising a wide variety of jurisdiction with respect to municipalities, a great part of which was exercised at one time by the Executive Council of the Province or by the Legislature.

When the Board holds a hearing it is subject in law to the rules of natural justice which, as applied in this case, could be stated as follows:

1: The tribunal shall be free from bias.

2: All persons having an interest in the subject matter shall be heard.

The administration of justice could be said to be divided between the judicial arm of government (the courts) and the executive arm of which latter this Board is a branch. The courts operate under strict rules and interpret and follow statutes and precedent. Administrative boards, such as this Board, administer what is sometimes called discretionary justice, having a minimum of rules and a wide spectrum of discretion.

In matters of law and jurisdiction there is an appeal from the Board to the Court of Appeal and on all matters there is an appeal to the Lieutenant Governor-in-Council.

The extent and nature of the jurisdiction of the Board could be described as responsibility for the sound growth and development of municipalities within the framework of the statutes with particular regard to economic stability. Part V of this report deals with this responsibility.

In Part VI is a report on the residual work performed in 1970 by this Board as arbitrator to fix compensation in those cases in which the Land Compensation Board had not been given jurisdiction.

.....

PART V

GROWTH AND ECONOMIC STABILITY OF MUNICIPALITIES

For the purpose of clarity in this report and for convenience the Board's jurisdiction in this part can be divided under the following headings:

1: Constitution, Boundary Revision and Dissolution of Municipalities.

2: Approval of Capital Undertakings and of the Imposition of Rates and Levies to Recover the Cost thereof.

3: Approval of Restricted Area By-laws, Official Plans and Plans of Subdivision.

4: Assessment Appeals.

SECTION 1

Constitution, Boundary Revision and Dissolution of Municipalities

Given in Schedule "A" to this report is a list of ten annexations ordered by the Board during the year.

During the year 1970 the Town of Pembroke was erected into a city and the Township of Calvert into a town with the new name of Iroquois Falls.

The Town of Haileybury and the Township of Bucke were amalgamated under the name of the Town of Haileybury effective January 1, 1971.

On the application of the Trustees the Police Village of Newington in the Township of Osnabruck was dissolved effective January 1, 1971.

SECTION 2

Approval of Capital Undertakings and of the Imposition of Rates and Levies to Recover the Cost thereof

For a number of years past the Board has required every municipality seeking approval of any capital expenditure to file with the Board a completed questionnaire giving information in

some detail as to the assessment and capital debt of the municipality. This information is required and used in assessing the ability of the municipality to incur new capital debt.

In a number of municipalities, which include all cities, a substantial number of towns and villages and a number of townships, the Board requires to be filed a five-year forecast showing the estimate made by the Council of the capital needs for the whole or part of the cost of which the municipality expects to be called on to issue debentures or undertake other long term debt in each of the five years. This forecast is studied in the light of the financial position of the municipality and if the forecast for the current year is found to be within the financial competence of the municipality and otherwise acceptable, a quota is established for the municipality against which are charged all applications for expenditure made during the year. This avoids the necessity of examining the capital position of the municipality at the time of each new application during the year.

The year 1970 was the second year under the new legislation creating larger boards of education, usually of County or District size, and vesting in those boards the power to issue their own debentures for the cost of capital works.

As reported last year this entailed an enormous amount of additional work at Board level and while the bugs and complications were quite substantial they were somewhat less in 1969 than anticipated. But the anticipation was only delayed. In the year 1970 the full force of the complications engendered by the new procedures descended with its full weight and resulted at times in serious and most embarrassing delays in processing approvals.

This was met by basic revisions in the Board's procedures as well as a systems study of the Board's administrative organization. These have led to a considerable improvement in 1971 and it is reasonable to expect the full benefit will be felt in 1972.

The following table shows the number of new capital expenditure applications received and the total amount approved in each of the last five years:

Year	Number	Amount
		$
1966	2,874	619,231,676.61
1967	2,869	608,595,545.48
1968	2,841	703,939,055.03
1969	2,456	666,407,390.00
1970	2,425	652,300,476.89

It will be noted there was a reduction in total from 1968 in 1969 and a further reduction in 1970. These are a direct result of the efforts of local government to limit demands on the capital market to more urgent needs. It is suggested this is a source of satisfaction and encouragement to the taxpayer.

As a result of a requirement contained in The Ontario Education Capital Aid Corporation Act passed in 1966 the projects of all school boards to be financed under the provisions of this statute require the approval of this Board under Section 64 of The Ontario Municipal Board Act.

This means that many separate school boards were required, for the first time, to obtain the approval of this Board under Section 64 of The Ontario Municipal Board Act. It is understandable that this legislation has very greatly increased the number of applications to this Board for approval of capital expenditures for school purposes, offsetting to a great extent the reduction resulting from the limiting of capital demands mentioned above.

ONTARIO WATER RESOURCES COMMISSION

The Ontario Water Resources Commission Act provides for the undertaking by the Commission on behalf of a municipality of the construction of water works and sewerage works. Since these projects create a debt of the municipalities they require the approval of the Board under Section 64 of The Ontario Municipal Board Act. When part of the cost is to be raised by a special rate the Board requires public notice and if objections are made a public hearing is held.

By an amendment to the statute the Commission is empowered to enter into agreements with municipalities whereby the Commission will construct sewage works and water production works to serve a particular municipality or group of municipalities. The agreement provides that the works when construction shall remain the property of the Province and that sewage treatment or water supply service is provided to the municipality according to certain specified rates of charges.

When any part of the cost to the municipality is to be raised by a special rate the Board requires public notice and if objections are made a public hearing is held.

During the year 1970 the Board received 38 applications from the Commission for projects at an estimated cost of $5,834,975.33.

SECTION 3

Approval of Restricted Area By-laws, Official Plans and Plans of Subdivision

This jurisdiction is conferred under The Planning Act.

The duties of this nature conferred on the Board are perhaps unique in any democratic jurisdiction. The power to approve official plans, official plan amendments, and plans of subdivision is vested by the statute in the first instance in the Minister of Municipal Affairs. However, the Minister may, and in certain cases shall, refer the application for approval to be decided by this Board. While not required by statute so to do, the Board invariably holds a public hearing on notice to all those believed to have an interest in the subject matter.

By-laws authorized by Section 30 of The Planning Act, referred to in the statute as restricted area by-laws and commonly referred to as zoning by-laws, are perhaps more properly called land use control by-laws. Because this term is cumbersome and the term zoning by-law is so convenient this latter reference is rapidly assuming a status through general acceptance. Study should be

given to incorporating this description into the statute with an appropriate definition.

The Board's whole practice and administration of this jurisdiction under The Planning Act are both oriented and geared to protect the individuals and minorities having the greatest interest, those in the immediate neighbourhood. The power to pass by-laws or refrain is vested by the statute in the local council. Both in law and in fact these elected representatives are charged with the responsibility of serving the greatest common good of the whole community.

Many cases arise in the control of land use in which the greatest common good is in conflict, sometimes serious conflict, with the rights of individuals or minorities. Democracy is by definition the rule of the majority, but if the aim of democracy is justice, then it demands a built-in mechanism to protect the rights of individuals and minorities. This Board seeks to fill this need by performing a function of review - to give the individual or minority the right to a "day in court".

This Board conducts these hearings under the adversary system. All evidence, whether factual or opinion, can be subjected to the searchlight of trained cross-examination. Written reasons are given for decisions so that the opinions and conclusions upon which decisions are based can be made known and reviewed as required. The Board acts on opinions and conclusions that have been refined and tempered under the adversary process. It does not act on its own private, secret opinions nor on the sheltered advice of its own employees.

A procedure has been established by the Board whereby municipalities are requested to give notice of intention to apply to the Board for approval of any such by-law that has been passed. The notice required is one calculated best to bring the proposed publication to the notice of all those concerned. A specified

period of time, usually fourteen days, is given for objections in writing to be delivered to the municipal clerk. A similar notice is sent to the Community Planning Branch of the Department of Municipal Affairs in order that the Board may receive an opinion from that Branch on planning and technical aspects of the by-law. If these opinions are critical they are made available for study and comment by those concerned.

If no objection is made approval is practically routine. If there are objections a hearing is held on notice to land owners specially concerned and to all objectors.

The number of applications made to the Board under this legislation during the year, with figures for the two previous years, is as follows:

		1970	1969	1968
1:	Applications for approval of restricted area by-laws	1527	1749	1526
2:	Applications for approval of plans of redevelopment	3	2	2
3:	Applications for approval of proposed plans of subdivision	10	6	5
4:	Applications for approval of official plan amendments	36	37	19
5:	Appeals to Board for a direction that a restricted area by-law be amended by Council	80	62	54
6:	Appeals from committees of adjustment	789	292	561

SECTION 4

Assessment Appeals

During the year 1969 assessment appeals were made to the Board under the several statutes as follows:

The Assessment Act	394
The Conservation Authorities Act	2
The Local Improvement Act	2
The Municipal Act	10
The Municipal Tax Assistance Act	2
The Power Commission Act	6
	416

This total of 416 such appeals made in 1970 compares with 633 appeals in 1969 which in turn was a sharp increase over 243 appeals in 1968. The increase in 1969 was caused chiefly by reassessments involving a higher valuation level and the trend as of 1970 would appear to indicate a levelling off.

.....

PART VI

ARBITRATIONS IN RESPECT OF COMPENSATION FOR LANDS TAKEN OR INJURIOUSLY AFFECTED

As noted earlier in this report the jurisdiction of this Board to determine compensation or damages for lands taken or injuriously affected has been decreased by the transfer of almost the whole of this jurisdiction to the Land Compensation Board.

During the year 1970 applications were made to the Board as follows:

	1970
The Conservation Authorities Act	4
The Expropriations Act, 1968-69	116
The Public Service Works on Highways Act	15
The Secondary Schools and Boards of Education Act, 1966	9

.....

PART VII

REVENUE

In compliance with the requirement of Section 99 of The Ontario Municipal Board Act the Board has adopted a tariff of fees payable on various types of applications and orders.

The following table sets forth the fees received by the Board and transferred to the Treasurer of Ontario for the fiscal year ending March 31, 1970, and the preceding six years. In conformity with the present system of provincial accounting this table is given for the fiscal year, in contrast to other statistics contained in this report which are made for the calendar year ending December 31, 1970.

Fiscal Year	Amount
1963-64	$ 308,631.05
1964-65	308,066.04
1965-66	442,623.27
1966-67	578,434.00
1967-68	611,815.82
1968-69	563,956.95
1969-70	493,142.11

The revenues of the Board for the calendar year 1970 amounted to $489,151.81, down from $513,278.85 in the calendar year 1969. This was due to a reduction in the amount of capital expenditures approved, a reduction as reported earlier due to the monetary situation in Canada.

All of which is respectfully submitted.

J. A. KENNEDY
CHAIRMAN

M. FRASER
ACTING SECRETARY

This is SCHEDULE "A" to the 65th ANNUAL REPORT of THE ONTARIO MUNICIPAL BOARD

for the year 1970, made to

THE HONOURABLE THE MINISTER OF MUNICIPAL AFFAIRS

Orders Granting Annexations - 1970

Date of Order		Effective Date	Area-Acres
Sept. 30, 1970	To : CHATHAM, City of From: Chatham, Township	Jan. 1, 1971	29.50
Oct. 19, 1970	To : RENFREW, Town of From: Horton, Township	Jan. 1, 1971	508.18
Nov. 5, 1969	To : TILBURY, Town of From: Tilbury East, Township	Jan. 1, 1970	202.00
Sept. 15, 1969	To : TAVISTOCK, Village of From: East Zorra, Township	Jan. 1, 1970	105.00
Aug. 13, 1969	To : MARMORA, Village of From: Marmora, Township	Jan. 1, 1970	36.90
Sept. 22, 1969	To : SANDWICH WEST, Township of From: Windsor, City	Jan. 1, 1970	-
Mar. 16, 1970	To : BEAVERTON, Village of From: Thorah, Township	Jan. 1, 1971	395.00
May 7, 1970	To : BARRIE, City of From: Innisfil, Township	June 15, 1970	100.00
June 1, 1970	To : INGERSOLL, Town of From: West Oxford, Township	July 1, 1970	2000.00
June 25, 1970	To : PORT ELGIN, Town of From: Saugeen, Township	Jan. 1, 1971	169.00

This is SCHEDULE "B" to the 65th ANNUAL REPORT of THE ONTARIO MUNICIPAL BOARD

for the year 1970, made to

THE HONOURABLE THE MINISTER OF MUNICIPAL AFFAIRS

Classification of Municipal Capital Expenditures approved during 1970

I - MUNICIPAL

	Amount Approved	1970	1969
(1) General Government			
Civic Buildings	$ 4,751,100.00	$ 4,751,100.00	$ 3,342,191.00
(2) Protection to Persons & Property			
Fire	2,399,216.36		
Police	14,407,625.00		
Street Lighting	772,672.00	17,579,513.36	2,916,444.50
(3) Public Works			
(a) Grade Separations	6,506,747.01		
Streets, Roads, Lanes	52,552,936.01		
Sidewalks	5,916,380.97		
Bridges	5,639,275.00		
Tunnels, Subways	25,172,863.85		
Road Machinery	1,348,351.50		
Viaducts	110,000.00		
Conservation	80,000.00	97,326,554.34	123,037,764.19
(b) Watermains	13,777,436.34		
Storm Sewers	53,197,018.06	66,974,454.40	60,764,312.81
(4) Sanitation & Waste Removal			
Sanitary Sewers	35,252,210.90		
Sewage Treatment	5,143,453.00		
Garbage	353,000.00		
Waste Collection	9,200,000.00	49,948,663.90	67,099,902.83
(5) Health			
Hospitals	4,327,006.00		
Nurses' Residences	650,000.00	4,977,006.00	15,818,583.17
(6) Social Welfare			
Homes for Aged	26,253,955.00		
Welfare Offices	133,095.00	26,387,050.00	9,627,599.65
(7) Recreation Services			
Amusement Parks	12,106,253.50		
Golf Courses	905,000.00		
Skating Rinks	4,393,838.00		
Swimming Pools	1,165,000.00		
Community Centres	2,505,739.00	21,075,830.50	39,779,699.58

(8) Community Services	Amount Approved	1970	1969
Exhibitions, Fairs	$ 700,000.00		
Theatres	8,583,800.00		
Libraries	6,472,060.00		
Housing	48,590.00	15,804,450.00	8,436,714.00
Total General Government		$304,824,622.50	$330,823,211.78

II - EDUCATION

Elementary Schools	$117,675,191.31		
Secondary Schools	151,228,239.02	$268,903,430.33	$264,536,221.60

III - UTILITIES

Telephone	$ 137,792.00		
Electricity	14,807,869.00		
Waterworks	19,425,069.24		
Transportation	1,602,000.00		
Acquisition Lands	35,388,153.35		
Others: including parking	4,514,540.47		
Water Pollution	2,647,000.00	$ 78,572,424.06	$ 71,047,957.50

S U M M A R Y

General Government	$304,824,622.50	$330,823,211.78
Education	268,903,430.33	264,536,221.60
Enterprises	78,572,424.06	71,047,957.50
	$652,300,476.89	$666,407,390.88